IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10366 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KANA NAGARAM

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR AMAR D MITHANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/04/2000

ORAL JUDGEMENT

Learned advocate Ms. Bhatt is appearing for the petitioner corporation. Learned advocate Mr. Mithani is appearing for the respondent workman.

Rule. Service of rule is waived by Mr.Mithani, the learned advocate for the respondent workman. On the facts and in the circumstances of the case and with the consent of the learned advocates for the parties, the matter is taken up for final hearing today itself.

The facts leading to the filing of this petition, in short, are that the respondent was working as a Badli worker on the postof conductor. On 27.7.1983, the bus which was being conducted by the respondent conductor was checked by thechecking party. During the course of checking, it was found that the respondent had collected bus fare of Rs.16.80 ps. but had not issued ticket to one passenger. The respondent was, therefore, served with notice and explanation was called for. But no departmental inquiry was initiated against the respondent before terminating service of the respondent workman. Since the guilt alleged against the respondent was found to have been established, according to the Corporation, the name of the respondent workman was deleted from the waiting list of conductors on 24.8.1983. Said action of the petitioner corporation was challenged by the respondent before the labour court Rajakot by filing Reference No. 522/84 which reference was subsequently transferred to the Labour Court, Junagadh and was renumbered as Reference (LCJ) No. 155/90. The labour Court, Junagadh, under its impugned judgment and award dated 5.7.1999 has partly allowed the reference of the applicant and directed the petitioner corporation to reinstate the respondent workman in service with 40% of the back wages for the intervening period. The labour court further directed to the petitioner to pay Rs.15000/- to the workman's union as costs for penalty. Feeling agrieved by the said impugned judgment and award passed by the labour Court, the petitioner corporation has approached this petition before this court under Article 226/227 of the Constitution of India.

Here, it is required to be noted that during thependency of the reference proceedings, the respondent workman has expired on 1.12.1988. The petitioner corporation has produced xerox copy of the death certificate of the respondent workman which is at page 28 of the petition.

I have perused the impugned award and the papers brought on record. Before the labour court, the respondent workman was examined at Exh. 20 and, thereafter, the corporation has raised contention that if the court ultimately comes to the conclusion that the termination is based on an allegation of misconduct,

then, the petitioner corporation may be given an opportunity to prove misconduct against the respondent. The labour court has considered this request and has directed thepetitioner corporation to prove the misconduct against the respondent workman vide its order dated 20.12.1988. Thereafter, before the labour court, no oral evidence was led by the petitioner after the oral evidence led by the respondent workman vide Exh. 20 as stated above. Though the petitioner was given an opportunity to prove the misconduct by leading evidence before the labour court, no evidence in that regard was produced by the petitioner and has not proved the misconduct as aleged against the respondent workman. Before the labour court, vide pursis Exh. 30, the petitioner corporation has closed the evidence.

The labour court has, thereafter, considered and examined the merits of the matter. The labour court was of the view that the order of termination was based on an allegation of misconduct and for that, no departmental inquiry was initiated against the respopndent workman. The labour court was further of the view that the petitioner has failed to establish the misconduct before the labour court by leading evidence. Therefore, considering the evidence of the respondent vide Exh.20, the labour court directed thepetitioner corporation to reinstate the respondent in service with 40% of the back wages and has denied the rest of the back wages in view of his gainful employment, to some extent, as per his oral evidence Exh. 20. The labour court was of the view that there was some delay in disposal of the said reference. The labour court was of the view that the petitioner corporation has not extended cooperation for expeditious disposal of the reference and, therefore, because of negligence and inaction on the part of the petitioner for delaying the decision in the reference proceedings, the labour court directed the petitioner corporation to pay an amount of Rs.15000/- as fine vide order dated 5th July, 1999.

As stated above, during the pendency of the reference proceedings itself, the respondent workman has died on 1st December, 1988. Therefore, now, it is the contention of the petitioner corporation that the impugned award passed by the labour court cannot be implemented in so far as the reinstatement is concerned and therefore, direction of reinstatement of the respondent is required to be quashed and set aside. Learned advocate Ms. Bhatt has further submitted that the directions of making payment of cost of Rs. 15000/- are also required to be quashed and set aside because the

petitioner is a public body there was some delay on the part of the petitioner since the advocate concerned has remained negligent in prosecuting the matter but for that, the petitioner cannot be penalised. She has further submitted that the petitioner alone cannot be held responsible for such delay. She has, therefore, submitted that the direction of payment of cost is also required to be quashed and set aside.

I have considered the arguments made by the learned advocates for the respective parties. I have also perused the impugned award. According to my opinion, the findings given by the labour court are legal, valid and are in accordance with the law laid down by this court in case of G.S.R.T.C. and another Rasdiya and others reported in 1993 (1) GLR 442. In said decision, division bench of this court has considered the very same question that even in case of badli worker, for terminating the service of such badli workman on the charge of misconduct or the allegation which is not admitted by the concerned workman, regular detailed departmental inquiry is necessary and in such circumstances, if the termination is effected which is basedon an allegation of misconduct which isnot admitted by the workman concerned without initiating any departmental inquiry,then, such termination is bad. In the instant case also, on the basis of the alleged misconduct of non issuance of ticket/s to certain passengers, the service of the respondent was terminated without initiating any departmental inquiry against him and even before the labour court also, the petitioner has not led any evidence for proving such misconduct. Therefore, in view of the principles laid down by the division bench of this court in aforesaid decision reported in 1993(1) GLR 442, the labour court is justified in directing reinstatement of the respondent workman. Further, the learned advocate for the petitioner has not been able to point out any error which is apparent on the face of record. She has also not been able to point out any jurisdictional error and/or infirmity in the impugned award passed by the labour court. Therefore, the submission made by Ms. Bhatt that the direction of reinstatement should be quashed and set aside since the respondent has died cannot be accepted. The labour court has directed reinstatement of the respondent with retrospective effect and with 40% of the back wages and since it has not been pointed out that such directions are unjust, the direction of reinstatement with 40% of back wages cannot be quashed and set aside. At the most, it can be said that such direction of reinstatement is now not required to be

implemented in view of the death of the respondent workman on 1.12.1988. However, I am of the view that the cost imposed by the labour court is required to be reduced. In view of the delay on the part of the petitioner in prosecuting the matter before the labour court, I am of the view that it would be just and proper to direct the petitioner to pay fine of Rs. 5000/-. Thus, inview of the deathof the respondent workmanon 1.12.1988, I am of the view that the direction of reinstatement of the respondent is not required to be implemented but the petitioner corporation is required to be directed to pay the amount of 40% of the back wages to the heirs and legal representatives of the respondent workman Kana Nagaram from 24.8.1983 till the date of deathof the deceased workman Kana Nagaram i.e. 1.12.1988 with cost of Rs. 5000/-. The impugned award passed by the labour court is required to be modified to the extent indicated hereinabove.

The petitioner corporation is accordingly directed to pay an amountof 40% of the back wages to the heirs and legal representative of the respondent workman Kana Nagaram from 24.8.1983 till 1.12.1988 with an amountof Rs. 5000/- towards costs as stated above. It is clarified that in view of the death of the respondent workman Kana Nagaram, the direction of his reinstatement in service is not required to be implemented. The petition is partly allowed as aforesaid. Rule is made absolute in terms indicated hereinabove. There shall be no order as to costs.

In the interest of justice, the petitioner is directed to implement the award as modified by this court within four weeks from the date of receipt of certified copy of this order and to pay 40% of the back wages for aforesaid period to the heirs and legal representatives of the respondent workman Kana Nagaram with an amount of Rs.5000/- towards costs within four weeks from the date of receipt of certified copy of this order.

19.4.2000. (H.K.Rathod,J.)
Vyas